

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
07-02-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**IA(IBC)/669/2021
CP(IB) 601/10/HDB/2018
U/s 10 of IBC, 2016**

IN THE MATTER OF:

J Manivannan, RP

...Corporate Applicant

Vs

RCM Infrastructure Ltd

...Respondent

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders in IA(IBC)669/2021 in CP(IB) No.601/10/HDB/2018 pronounced vide separate sheets.

In the result, IA(IBC) 669/2021 is dismissed, and the Corporate Debtor is put under Liquidation.



SD/-

MEMBER (T)

Srinivas



SD/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

IA No. 669 of 2021
in
CP (IB) No. 609/10/HDE/2018

*Application under Sections 12 and 60 (5) of the IBC, 2016, R/w
Regulation 40 of the IBBI (IRPCP) Regulations, 2016*

In the matter of **RCM Infrastructure Limited**

Filed by

J. Manivannan
Resolution Professional
RCM Infrastructure Limited
Plot No. 53B, 8/330, Vishalakshi Nagar
Fourth Cross Street, Santhosapuram
Chennai- 600073

Date of order: 07.02.2022

Coram:

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Resolution Professional.
For CoC : Shri Krishna Grandhi, Advocate, Ms.Aparna (AGM)
(UBI), Shri Birendra Chandraka, Manager (BOI),
Shri Narendra Shukla (Reliance Capital)

SD/r

SD/—

PER: BENCH

ORDER

1. The Interim Resolution Professional. (for short IRP) appointed by this Tribunal pursuant to our order dated 03.01.2019 directing initiation of Corporate Insolvency Resolution Process (For short "CIRP") against the Corporate Person (RCM Infrastructure Limited) vide CP (IB) No. 601/10/HDB/2018 and who later continued as Resolution Professional (RP), has filed this application under Section 12 and 60 (5) of Insolvency & Bankruptcy Code, 2016 ("Code"), r/w Rule 11 of NCLT Rules, 2016 praying this Tribunal to grant extension of the term of Corporate Insolvency Resolution Process (CIRP) by three months w.e.f 13.01.2021 or such number of days as this Tribunal may deem fit in order to implement the very object of the Code.
2. To put concisely, the Company Petition filed by the Corporate Person u/s 10 of IBC, 2016 was admitted by the Adjudicating Authority vide Order Dated 03.01.2019 and ordered commencement of initiation of CIRP against it. The Applicant herein was appointed as Interim Resolution Professional (IRP), who continued as Resolution Professional.
3. Pursuant to his taking over charge as IRP/RP, the Applicant herein caused public announcement for Expression of Interest (EOI) in Business Standard (English) and Andhra Prabha (Telugu) newspapers on 09.05.2019 inviting resolution plans from the prospective resolution applicants.

4. The first extension of the term of CIRP by 90 days beyond 180 days was granted on 19.07.2019 vide orders passed in IA 598/2019 and the 270 days' timeline expired on 01.10.2019.
5. It is submitted that, in response to public announcement stated *supra*, the only EOI which was received from the promoter of the Corporate Person was rejected by the RP on the ground that the promoters are ineligible to submit the plans as per terms of Section 29 A of IBC, 2016. Challenging the said order, the promoters of Corporate Person preferred IA No. 883 of 2019 to the Adjudicating Authority (AA) and the AA vide order dated 06.01.2020 declared that the Corporate Person fall under the ambit of MSME and as such the Promoters are eligible to file the resolution plans under Section 240A of the Code and further directed to complete the whole process on or before 06.02.2020.
6. Pursuant to the above said order of the AA, the promoters submitted their resolution plans on 18.01.2020 and the same was placed before the Committee of Creditors (CoC) on 23.01.2020 for their consideration. After due deliberations, the CoC requested the Resolution Applicant to enhance the resolution plan value for their consideration and the revised resolution plan was submitted on 06.02.2020 i.e. on the last date of extended period.
7. Since the revised resolution plan was submitted at the fag-end of the extended period, the Applicant preferred IA 157/2020 seeking extension of the term of CIRP by another 15 days so as to enable

them to evaluate and consider the same for the benefit of the stakeholders concerned.

8. It is stated that before the AA could any order, a national wide lockdown was imposed by the Govt. of India. It is further submitted that the RP had filed IA No. 832 of 2019 on 26.09.2019 which was heard by the AA from time to time and was ultimately disposed of on 15.07.2020. The same was partly allowed by setting aside the sale of assets of the Corporate Debtor as against the sale of assets of the Corporate Guarantor. It is further brought to the attention of this AA by the Applicant that, one of the major members of CoC i.e. IOB, has expressed their difficulty to consider the said resolution plan owing to pendency of Company Appeal (AT) Insolvency No. 736 of 2020 before Hon'ble NCLAT, challenging the order passed by the AA in IA 832 of 2019 on 26.09.2019.
9. The RP further submits that this Tribunal was pleased to extend the CIRP period initially from 07.02.2020 to 24.03.2020 and after excluding covid induced lockdown period from 25.03.2020 to 31.07.2020, the CIRP was extended till 25.08.2020 and directed the RP to complete the CIRP without fail by 25.08.2020, vide orders passed on 04.08.2020.
10. Pursuant to the order dated 04.08.2020, the promoter filed their revised plan on 10.08.2020 which was placed before the CoC for their consideration on 17.08.2020. It is submitted that two CoC members i.e. Andhra Bank and IOB have disagreed with the

revised resolution plan and requested the Resolution Applicant/promoters to remove certain clauses from the resolution plan and directed them to file their revised plan. Admittedly, both CoC members have realised substantial amounts by way of sale of assets of the guarantors of the Corporate Person during the CIRP period and the same was appropriated by them against the admitted claims and the banks failed to submit their revised claims after adjusting the appropriated amount as requested by the RP.

11. This Tribunal, as an exceptional case, granted extension of 44 days up to 09.10.2020. After the said extension, the revised resolution plan was submitted by the promoters and the same was circulated to all the CoC members for consideration. Finally, the plan was discussed in the 9th CoC meeting held on 29.09.2020, 03.10.2020 and 05.10.2020 respectively. In the said meeting extensive negotiations and discussions had taken place and after verification the lead bankers opined that the promoters are willing to give necessary protection in respect of uninvoked bank guarantees to the tune of Rs. 44 crores, then the plan submitted by the promoters can be considered positively. In this regard, the Resolution Applicant requested the CoC to give further time to discuss with the investors and suitably amend the plan. In view of the fag-end of the extended time, the Resolution Applicant was requested to submit the plan on or before 07.10.2020.
12. In this background, the resolution professional expressed his inability to the CoC that it is impractical to take a decision on the

Resolution Plan being submitted by the promoters on or before the extended period i.e. 09.10.2020, as such suggested the CoC to approach the AA for extension of 15 days' time, provided the promoters submit revised plan on or before 07.10.2020, as suggested by the CoC.

13. In line with the suggestions made by the CoC members, the promoters (Resolution Applicant) submitted revised resolution plan with the RP on 07.10.2020 and the same has been circulated to CoC members for their consideration. As per the decision taken in the 9th CoC meeting, e-voting was conducted on 08.10.2020 and the CoC resolved to seek further extension of CIRP up to 13.01.2021, which was granted by the AA vide orders passed in IA No. 925/2020 dated 23.12.2020.
14. Pursuant to above extension granted, the Resolution Applicant submitted the revised resolution plan on 31.12.2020 which was placed before the CoC for deliberation on 05.01.2020. In the said meeting, the CoC members insisted the Resolution Applicant to provide 100% security for bank guarantees, even though the Resolution Applicant assured the CoC members to provide collateral to the extent of 25% on the value of existing guarantees. After due deliberations and verifying the feasibility and viability of the plan, when the e-voting was decided to be conducted on 12.01.2021, the resolution applicant submitted revised resolution plan on 11.01.2021 wherein it provided 100% collateral security for securing of existing bank guarantees as requested by IOB and

Andhra Bank. Due to paucity of time for considering the revised plan, the CoC members in its 11th CoC meeting, with voting rights of 66.42% sought further extension, however IOB having voting rights of 33.58% has dissented to the resolution. Owing to paucity of time, the CoC members expressed their inability to cast vote on the revised resolution plan within a day and since the extended date was to expire on 13.01.2021, the CoC passed a resolution recommending further extension of three weeks' time w.e.f 14.01.2021.

15. The Resolution Professional has further averred that in order to protect the interest of all the stakeholders, revival of operations of the Company is highly indispensable and crucial and the very object of the code is resolution of the Corporate Debtor/Company and not liquidation of the Company.
16. The Resolution Professional has further referred to the judgement of Hon'ble Supreme Court of India in the matter of Committee of Creditors of Essar Steel India vs Satish Kumar Gupta & ORs, that *“with regard to Section 12 of the Code, the Hon'ble Apex Court struck off the mandatorily word and held that while leaving the provision otherwise intact, the term “mandatorily” is struck-off as manifestly arbitrary under Article 14 of the Constitution of India and as being unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of*

330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. If the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days. It is only in exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the CD must take place beyond which it is to be driven into liquidation. It is submitted that as per the above decision of Hon'ble Apex Court and the powers conferred under Rule 11 of NCLT Rules, 2016, the NCLT and Hon'ble NCLAT can extend time limit beyond 330 days under Section 12 of the Code. Thus submitting the Ld. RP requested this AA to grant further extension of the term of CIRP by three weeks with effect from 13.01.2021.

17. At the outset, we would like to highlight the chronology of events post initiation of CIRP, which is detailed here under:-

Date	Events
03.01.2019	The Corporate Person was put into CIRP. 180 days CIRP ended on 02.07.2019
19.07.2019	90 days extension beyond 180 days granted w.e.f. 03.07.2019 to 01.10.2019 ordered in IA No.598/2019.
06.01.2020	CIRP is deemed to be continued by another 90 days effective from 16.08.2019 up to 14.11.2019 in view of insertion 3 rd proviso of Section 12.

06.01.2020	Exclusion of 30 days from the CIRP granted in view of declaration of Corporate Debtor as MSME and directed to submit resolution plan within one month with direction to complete the whole process within a period of 30 days i.e. 06.02.2020, vide orders passed in IA No. 833 of 2019.
04.08.2020	CIRP is extended in different spells i.e. from 07.02.2020 to 24.03.2020. Covid-19 lockdown is excluded from 25.03.2020 to 31.07.2020. CIRP is extended from from 01.08.2020 to 25.08.2020.
09.09.2020	CIRP is extended by 44 days wef 26.08.2020 to 09.10.2020 vide orders passed in IA No. 698/2020.
23.12.2020	CIRP is extended by three weeks from 23.12.2020 to 13.01.2021

18. It is seen from the records that when the matter was suo-motto reopened on 10.11.2021, Shri Lokesh Agarwal, PCS appearing for Resolution Professional reported that vide the instant application the applicant is seeking further extension of time, thus, defying the order passed by this Tribunal in IA No. 925/2020 dated 23.12.2020 wherein RP was directed to complete the CIRP within three weeks and categorically recorded that no further extension / exclusions will be granted under any circumstances. This Tribunal had further directed the Applicant to be present in person on 22.11.2021.
19. On 22.11.2021, this Tribunal sought explanation from the Applicant and CoC members for violating the order dated 23.12.2020 by the next date of hearing and adjourned to 04.01.2022. Learned Counsel Shri Krishna Grandhi appeared on

04.01.2022 and orally explained the circumstances under which delay has occurred in accepting the resolution plan by CoC.

20. As seen from the records an application (now numbered as IA No. 669/2021) though filed before the Registry on 17.02.2021, the same remained un numbered by the Registry owing to non-compliance of certain observations noticed during scrutiny of the IA. The Applicant, remained silent without pursuing the said application with the registry until the matter was *suo-motto*, reopened by this Tribunal on 10.11.2021. It is brought to the attention of this Adjudicating Authority by the Ld. Counsel for Applicant herein that, subsequent to filing of the said application, certain developments have occurred, which necessitated them to filing of memo seeking modification of the prayer clause.
21. In the above backdrop, the point that emerges for consideration by the Adjudicating Authority is
Whether the Applicant is entitled for further extension of time for completion of CIRP, in the backdrop of the facts of this case?
22. We have heard the Ld. Counsel for Resolution Professional and also the Resolution Professional.

Point.

Whether the petitioner is entitled for further extension of time for completion of CIRP, in the backdrop of the facts of this case?

23. The Corporate Debtor herein, was put into CIRP on the Application filed by the Corporate Person under Section 10 of IBC on 03.01.2019. Despite granting several extensions and exclusions, on various date as detailed in para 17 supra, the Resolution Professional failed to complete the CIRP of the Corporate Person even within the extended petition. Having noticed the practise of seeking extension of time repeatedly, this Tribunal on 23.12.2020, vide IA 925/2020, passed an order granting extension of CIRP by three weeks as final opportunity to the Corporate Person to enable the promoters to submit a resolution plan for consideration of CoC within the said period, alternatively with a direction that in the event no resolution plan is approved by the CoC, the Resolution Professional is directed to initiate next steps as required under the I & B Code. For better appreciation, the order passed in IA 925/2020 by the Tribunal is on 23.12.2020 reproduced below: -

Para 7: "Further taking into account the spirit of I&B Code and its objectives, viz. resolution of the Corporate Debtor rather than liquidation, we have considered the request made by the Resolution Professional for extension of time period by 30 days to enable the promoters to submit the resolution plan acceptable to the CoC Members within the said period. In the light of the recommendations of the Resolution Professional as well as taking into consideration that the Corporate Debtor is an MSME, and also prevailing pandemic conditions and the submissions made by the Resolution Professional, we deem it fit to give a final opportunity to the Corporate Debtor. Accordingly, we hereby extend the CIRP by three weeks from the date of this order, to enable the promoters to submit a resolution plan acceptable to the CoC Members within the said period. In the event of failure to submit resolution plan acceptable to CoC Members, we hereby direct the Resolution Professional to take the next steps as required under the I&B Code. No further, extension of CIRP will be granted under any circumstances".

Despite the above direction of the Tribunal, the Resolution Professional failed to comply with the directions of this Tribunal, and once again choose to file the instant IA, praying extension of time for a period of 3 weeks w.e.f. 13.01.2021.

24. Ld. Counsel for the RP during the hearing of this IA, came out with a plea that the RP had filed this IA in February, 2021 but the same was numbered and listed by the Registry only on 10.11.2021. The Bench therefore instructed the Registry to submit a brief note on this IA. Pursuant thereto, the Registry apprised the Bench that, during scrutiny the Registry has observed certain compliances that are required to be complied with by the Applicant and since the Applicant did not rectify the shortcomings, the IA was not numbered and never came before AA for consideration. However, the same was listed on 10.11.2021 after the shortcomings were rectified by the Applicant and the Registry numbered the IA as 669/2021.
25. Therefore, it quite clear that after filing the IA, the Applicant did not pursue the same with the Registry, thereby there was a total dereliction of his functions as Resolution Professional in carrying out the directions of the AA.
26. Further, the role of the members of the CoC in meeting the objectives of IB Code is not free from being blamed to carry out their duty and responsibilities of conducting the CIRP within the timelines prescribed. On 22.11.2021, this Tribunal sought

explanation from the Applicant and CoC members for violating the order dated 23.12.2020 by the next date of hearing and adjourned to 04.01.2022. Learned Counsel Shri Krishna Grandhi appeared on 04.01.2022 and orally explained the circumstances under which delay has occurred in accepting the resolution plan by the members of the CoC, however nothing in writing has been filed. We are therefore convinced that the COC too in the case lacked any seriousness in adhering to the time lines mandated during CIRP.

27. We would like to refer to Section 12 of the I & B Code:

12. (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five percent of the voting shares.

(3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days: Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

28. Further Regulation 40A Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provides model timeline of corporate insolvency resolution process on the assumption that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty days:
29. Further proviso inserted under Section 12 of the Code effective from 16.08.2019 provides that any extension of the period of Corporate Insolvency Resolution Process under this section shall not be granted more than once.
30. Further the Corporate Insolvency Resolution Process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.
31. In the case on hand, we find that the actions of the Resolution Professional are aimed at helping the promoters of the Corporate Person rather than the resolution of the CD. The passive role that the members of the COC have played also have helped the Resolution Professional in brazen violation of Section 12 of the Code.

32. Therefore, when the Applicant, having failed in receiving any resolution plan within the timeline prescribed under the Code, the relief sought for extension of time of CIRP by three weeks is liable to be rejected.
33. Hence taking into consideration the provisions of law as well as the documents on record, this Adjudicating Authority is of the view that the efforts to obtain resolution of the Corporate Person has failed hence the only option under the circumstances is to liquidate the Corporate Debtor. Therefore, the following orders are passed.

ORDER

- (a) IA No. 669/2021 stands rejected.
- (b) We hereby order that the Corporate Person i.e RCM Infrastructure Limited stands liquidated in the manner laid down in Chapter-III of the Code with effect from the date of order.
- (c) Mr. Dantu Indu Sekhar, 29-1401/6/1, Plot No 253 Road No 2 West, Deen Dayal Nagar Ramakrishna Puram, Neredmet, Hyderabad, Telangana 500056, having registration No. IBBI/IPA-003/IP-N00233/2019-2020/12773, indu.sekhar3@gmail.com is appointed as Liquidator. He shall file his consent in Form AA within two days of receipt of this order.
- (d) He shall issue public announcement stating that the Corporate Debtor is in liquidation in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.

- (e) The Moratorium declared under Section 14 of the code shall cease to have its effect.
- (f) Subject to Section 52 of the Code, no suit or other legal proceedings shall be instituted by or against the Corporate Person. This shall however not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (g) All powers of the Board of Directors, Key Managerial Personnel and partners of the Corporate Debtor shall cease to have effect and shall be vested in the Liquidator.
- (h) The Liquidator shall exercise the powers and perform duties as envisaged under Sections 35 to 50 and 52 to 54 of the Code, read with Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- (i) Personnel connected with the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as would be required for managing its affairs.
- (j) The Liquidator shall be entitled to such fees as may be specified by the Board in terms of Section 34 (8) of the Code.
- (k) This order shall be deemed to be a notice of discharge to the Officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- (l) The Applicant herein is directed to serve a copy on the Liquidator appointed herein above.

- (m) Copy of the order shall be furnished to IBBI directing to investigate the conduct of CIRP and for brazen violation of the Code, Regulations and directions of the AA, by the Insolvency Professional Shri J. Manivannan, and shall submit report to the AA by the Investing Officer within 3 months, for our information.
- (n) Top management of the CoC members to conduct an enquiry into the acts and violations done by the members of CoC, if found fault on the duties cast upon them.
- (o) The Regional Director, Ministry of Corporate Affairs, Registrar of Companies & Official Liquidator, Hyderabad, the Registered Office of the Corporate Debtor and the Liquidator.


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)


(DR N.V. RAMAKRISHNA BADARINATH)
MEMBER (JUDICIAL)

Binnu